

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

AMERICAN AIRLINES GROUP INC.
and
JETBLUE AIRWAYS CORPORATION,

Defendants.

Civil No.: 1:21-cv-11558

**PLAINTIFF STATES' MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF CONSENT MOTION FOR PAYMENT OF ATTORNEYS' FEES AND
COSTS**

INTRODUCTION

Plaintiffs, the District of Columbia, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, and the States of Arizona, California, and Florida (collectively "Plaintiff States"), by and through their undersigned counsel, and with the consent of Defendants American Airlines Group Inc. ("American") and JetBlue Airways Corporation ("JetBlue"), submit the following Memorandum in Support of their Motion for Attorneys' Fees and Costs Under Section 16 of the Clayton Act, 15 U.S.C. § 26, Rule 54 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 54, and Rule 7.1 of the Local Rules of the United States District Court for the District of Massachusetts, L.R., D. Mass. 7.1.

Following the Court's July 28, 2023, Final Judgment requiring the termination of the Northeast Alliance, the Parties engaged in good faith negotiations regarding the Plaintiff States' claims for attorneys' fees and costs as prevailing parties in this action. The Parties have reached

an agreement on the reasonable fees and costs, payment of which is conditional upon final resolution of this litigation in favor of Plaintiff States, and have executed a settlement agreement to this effect. The Plaintiff States request that the Court enter the attached Order, as consented to by the Parties, for the payment of fees and costs as provided for in the settlement agreement.

BACKGROUND

On July 15, 2020, Defendants entered into the agreement known as the Northeast Alliance (“NEA”). After an extensive investigation, Plaintiff States and the United States Department of Justice (“DOJ”) filed a complaint on September 21, 2021, to permanently enjoin the NEA pursuant to Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 16 of the Clayton Act, 15 U.S.C. § 26. Doc. No. 1. Section 16 of the Clayton Act provides that “[a]ny person . . . shall be entitled to sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws,” including a violation of Section 1 of the Sherman Act. Plaintiff States are “persons” for purposes of Section 16. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 260-261 (1972).

Plaintiff States requested that “the Northeast Alliance be adjudged to violate Section 1 of the Sherman Act,” and that “Defendants be permanently enjoined from continuing and restrained from further implementing the Northeast Alliance.” Doc. No. 1 at 32. On May 19, 2023, the Court issued its Findings of Fact and Conclusions of Law and determined that the NEA “plainly violates Section 1 of the Sherman Act,” and ordered that the alliance be permanently enjoined. Doc. No. 344 at 93. The Court issued its Final Judgment and Order Entering Permanent Injunction on July 28, 2023, requiring the termination of the Northeast Alliance and prohibiting further implementation of the alliance. Doc. No. 375. Defendants appealed this Order to the United States Court of Appeals for the First Circuit on September 25, 2023. On November 8,

2024, the United States Court of Appeals for the First Circuit issued a ruling affirming the Order of the court below.

The Court has extended time twice for the Plaintiff States to file a motion for attorneys' fees and costs while the Parties attempted to reach an agreement on fee issues. [ECF 349, 380]. The Parties have engaged in good faith discussions to settle the amount of the Plaintiff States' attorneys' fees and costs, and have avoided consuming the Court's time and resources.

On January 16, 2025, the Parties executed a settlement agreement providing for the amount the Parties agree are reasonable attorneys' fees and costs and the conditions for payment. The agreement further provides that the Plaintiff States shall have sole discretion as to the disbursement of the funds amongst themselves, consistent with their respective states' laws.

ARGUMENT

The Parties request that the Court enter an order on the payment of fees and costs to the Plaintiff States under the negotiated settlement. *See* Fed. R. Civ. P. 54. Payment under the settlement is conditioned on the final resolution of this litigation in favor of the Plaintiff States and is authorized under Section 16 of the Clayton Act. *See* 15 U.S.C. § 26. The Plaintiff States find that the negotiated settlement is appropriate and in the public interest, and that the payment to the Plaintiff States may be used as stated in the proposed Order.¹ Good cause exists to enter the requested Order.

Dated: January 17, 2025

Respectfully submitted,

MICHELLE A. HENRY
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¹ The amount to be paid does not appear in the proposed Order at the request of American and JetBlue. The Parties will provide this information to the Court *in camera*, if requested.

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